money's worth. The prosecution was entitled, however, to rely on the presumption contained in section 7(7) of the Ordinance. This subsection provides:

"Where it is shown that any person has been found to be playing any game of chance or any mixed game of chance and skill in a public place, it shall be presumed until the contrary is proved that such person was gaming in such public place."

"Gaming" means the playing of any game of chance or of mixed chance and skill for money or money's worth. The prosecution evidence was that no money passed but that chips were used. The defence evidence was that the game was not for money or money's worth and that the first, third and fourth appellants were merely teaching the second appellant how to play mahjong. This evidence was disbelieved by the Magistrate; and it failed to raise any doubt in the Magistrate's mind as to the guilt of the appellants. In the circumstances I find no ground for complaint.

For the above reasons I dismiss the appeal and affirm the convictions and sentences.

Appeal dismissed.

Solicitors:—*Murugason & Co.*

LEMBAGA ALAT-ALAT PEMBAJARAN LUAR NEGERI & ORS. v. HORNBEAM CO. LTD. & ANOR.

[C.A. (Tan Ah Tah, Buttrose and Ambrose JJ.) July 18, 1963]

[Singapore — Civil Appeal No. 6 of 1963]

Practice and Procedure—Application to strike out plaintiff on the ground of improper joinder—Order of Court joining party which had come into existence after commencement of action—Whether proper—R.S.C. 1934, O. XVI rr.1 & 11, O. XVIII r.4, O. LI r.23.

The provision in Order XVI rule 11(2) for the striking out of names of any parties who have been improperly joined refer to the action as framed by the plaintiffs. The improper joinder of parties referred to in rule 11(2) is the misjoinder of parties referred to in rule 11(1): and misjoinder in this context means the joinder of any person as a party to an action contrary to the provisions of the Rules of the Supreme Court.

Order XVI rule 1 provides who may be joined as plaintiffs in one action. Misjoinder of plaintiffs is therefore the joinder of persons as plaintiffs in the action as framed by the plaintiffs where such joinder is not permitted by Order XVI rule 1.

In this case as the Bank Koperasi was not joined as a plaintiff in the action as framed by the first and second plaintiffs at the commencement of the action (the Bank Koperasi then not being in existence) there was no joinder of the Bank Koperasi as a plaintiff contrary to the provisions of Order XVI rule 1. As the Bank Koperasi was added as a plaintiff by an order of Court under Order XVIII rule 4 the joinder was not an improper joinder under Order XVI rule 11, and the application was misconceived.

COURT OF APPEAL.

A. P. Godwin for the appellant.

E. W. Barker for the respondents.

Cur. Adv. Vult.

Ambrose J.: This is an appeal from an order dismissing an application by the first defendant by summons in chambers dated the 19th October, 1962. The application was for the striking out of the name of the third plaintiff, Bank Koperasi, Tani Dan Nelajan, on the ground of improper joinder. It was made under Order 16, rule 11, of the Rules of the Supreme Court, 1934. This rule provides as follows:

"11. (1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it.

(2) The Court or a Judge may, at any stage of the proceedings either upon or without the application of either party, and on such terms as appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added."

In my judgment, the provision in Order 16, rule 11(2), for the striking out of the names of any parties who have been improperly joined refers to the action as framed by the plaintiffs. In my view, the improper joinder of parties referred to in rule 11(2) is the misjoinder of parties referred to in rule 11(1): and misjoinder in this context means the joinder of any person as a party to an action contrary to the provisions of the Rules of the Supreme Court. Order 16, rule 1, states who may be joined as plaintiffs in one action. This rule provides as follows:

"All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate actions, any common question of law or fact would arise."

Misjoinder of plaintiffs is, therefore, the joinder of persons as plaintiffs in the action as framed by the plaintiffs where such joinder is not permitted by Order 16, rule 1. The Bank Koperasi was not joined as a plaintiff in the action as framed by the first and second plaintiffs. At the commencement of the action, the Bank Koperasi was, in fact, not in existence. There was no joinder of the Bank Koperasi as a plaintiff contrary to the provisions of Order 16, rule 1. It must be pointed out that the Bank Koperasi was made a plaintiff by an order of Court made on an application by the first and second plaintiffs and the Bank Koperasi by sum-

mons in chambers dated the 21st June, 1962. This application was made under Order 18, rule 4. This rule provides as follows:

"4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained ex parte on application to the Court or a Judge, upon an allegation of such change, or transmission of interest, or liability, or of such person interested having come into existence."

This rule has two limbs. I have underlined the material parts of the second limb because one of the allegations upon which the application was made relates to the second limb. The allegation was that the Bank Koperasi was a person interested who had come into existence after the commencement of this action. Both defendants were served with the application and did not oppose the application. As the Bank Koperasi was added as a plaintiff by an order of Court made under Order 18, rule 4, it seems to me a strange use of language to suggest that the joinder of the Bank Koperasi as a plaintiff was an improper joinder within the meaning of Order 16, rule 11. If counsel for the first defendant was of the opinion that the Judge who made the order under Order 18, rule 4, had erred, it seems to me that the first defendant, who was served with the order, should have applied to the Court below or a Judge to discharge the order under Order 18, rule 6, which provides as follows:

"6. Any person.....who is served with an order under rule 4, may apply to the Court or a judge to discharge or vary such order, at any time within twelve days from the service thereof."

Alternatively, the first defendant should have appealed to this Court. Such an appeal could not have been brought unless the Judge who made the order had certified, after application for further argument in Court, that he required no further argument, or unless leave had been obtained from a Judge or from this Court: see Order 51, rule 23, and section 30(2) of the Courts Ordinance. It seems extraordinary to me that the first defendant, instead of availing itself of either of these remedies, should seek to have recourse to a rule which, in my opinion, was never intended to deal with any complaints against an order made by a Judge for the joining of any person as a party and the carrying on of proceedings between the original parties and the new party. In my judgment, the application of the first defendant was clearly misconceived, and the Judge who heard the application was clearly right in dismissing it. I would therefore dismiss the appeal with costs.

Tan Ah Tah and **Buttrose JJ.** concurred.

Appeal dismissed.

Solicitors:—*Donaldson & Burkinshaw; Lee & Lee.*

FAZIL RAHMAN & ORS. v. AR. S. NACHIAPPA CHETTIAR

[O.C.J. (Suffian J.) July 20, 1963]

[Alor Star — Petition No. 377 of 1960]

Administration—Appointment of creditor as administrator—Revocation of appointment—Consideration of due and proper administration of estate and interests of beneficiaries—Probate and Administration Ordinance, 1959, s.34—"For any sufficient cause."

Limitation—Statute-barred debt—Whether provable against insolvent estate—Probate and Administration Ordinance, 1959, First Schedule Pt. I.

S died in 1959 possessed of certain lands and leaving him surviving four children none of whom applied for letters of administration. In 1960 NC who said that he had in 1951 lent the deceased $7,600 applied for letters of administration. Since none of the deceased's children (all of whom had been served) was present at the hearing the court granted administration to the applicant as creditor in 1961. In 1962 the attorney for the administrator applied for leave to sell all the deceased's estate, the proceeds to be applied to pay off the deceased's debt to the administrator to meet expenses of taking out the L.A., the sale and the payment of estate duty. The declared value of the estate was only $14,600 and if the administrator were entitled to recover his debt which included principal and interest and which was *prima facie* statute barred there would be nothing left for any of the deceased's children. Accordingly they opposed the application and moved that the applicant's appointment as administrator be revoked and that they should be appointed administrators instead.

Held: (1) as there was no allegation that the estate was not properly administered and the estate appeared to be insolvent, there was no sufficient cause to revoke the grant under section 34 of the Probate and Administration Ordinance;

(2) a statute-barred debt is not provable against an insolvent estate.

Cases referred to:—

(1) *In the Goods of William Loveday* [1900] P. 154.

(2) *Cotterell* v. *Price & Others* (1885) 29 Ch.D. 358 at p.360.

MOTION.

A. Jayadeva for the administrator.

Chang Min Tat for the deceased's children.

Cur. Adv. Vult.

Suffian J.: In this matter it is necessary for me to consider the principles on which the appointment of an administrator may properly be revoked.